

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

MONDAY, THE 3RD DECEMBER, 2007 / 12TH AGRAHAYANA, 1929

FAO.No. 104 of 2003(A)

(IOP.46/1998 of III ADDL.SUB COURT, ERNAKULAM)

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APPELLANT/2nd PETITIONER:

P.V.MARIAMMA, D/O.LATE VARKEY, AGED
42 YEARS, RESIDING AT PADIPURACKAL HOUSE,
MULANTHURUTHY P.O., MULANTHURUTHY.

BY ADV. SRI.P.N.RAMAKRISHNAN NAIR
SRI.P.VISWANATHAN

RESPONDENTS/RESPONDENTS:

1. SARAMMA JACOB, W/O.JACOB, AGED ABOUT
45 YEARS, RESIDING AT KALLARACKAL HOUSE,
MULANTHURUTHY P.O. MULANTHURUTHY.
2. P.V.ABRAHAM, S/O.VARKEY, AGED ABOUT
45 YEARS, PADIPURACKAL HOUSE,
MULANTHURUTHY P.O., MULANTHURUTHY. (**DIED**)
3. ELIYAMMA DAVID, W/O.P.V.DAVID, AGED
ABOUT 48 YEARS, RESIDING AT PADIPURACKAL
HOUSE, MULANTHURUTHY P.O., MULANTHURUTHY.
4. MARY THOMAS, W/O.P.V.THOMAS, AGED ABOUT
58 YEARS, RESIDING AT PADIPURACKAL HOUSE,
MULANTHURUTHY P.O., MULANTHURUTHY.
5. CHINNAMMA PATHROSE, W/O.PATHROSE,
AGED ABOUT 48 YEARS, MULANTHURUTHY P.O.,
MULANTHURUTHY.
6. GREATER COCHIN DEVELOPMENT AUTHORITY,
REPRESENTED BY ITS SECRETARY,
KADAVANTHRA, KOCHI-20.

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7. MANI, S/O.SCARIA, AGED ABOUT 60 YEARS,
RESIDING AT EDAPPANGATTIL HOUSE,
MULANTHURUTHY P.O
MULANTHURUTHY.
8. ABRAHAM, S/O.ABRAHAM, AGED ABOUT 45 YEARS,
RESIDING AT KATTARACKAL HOUSE,
MULANTHURUTHY.P.O., MULANTHURUTHY.
9. P.V.THOMAS, S/O.VARKEY, AGED ABOUT 70 YEARS,
RESIDING AT PADIPURACKAL HOUSE,
MULANTHURUTHY.P.O., MULANTHURUTHY.
10. P.V.ANNAMMA, W/O.VARGHESE,
RESIDING AT RAJI NIVAS, ROOM NO.1/13,
KATE, MANIVELI, KALYAN (EAST), THANE,
MUMBAI.

ADDL.R-11. ROY VARGHESE, AGED 30, S/O.P.V.ABRAHAM,
PUTHENPURACKAL HOUSE,
THURUTHY.P.O., CHANGANASSERY, PIN-686 535 IMPEADED
AS THE LEGAL REPRESENTATIVE OF DECEASED SECOND
RESPONDENT VIDE ORDER DTD.11.8.2006 IN I.A.NO.3530/2005.

BY ADV. SRI.P.M.JOSHI
SRI.J.MATHAPPAN
SRI.P.M.JOSHI
SRI.E.G.GORDEN
SMT.K.V.BHADRA KUMARI
SMT.SHIBI. K.P.

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD
ON 03/12/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

P.R.RAMAN & V.K.MOHANAN, JJ.

F.A.O.No. 104 of 2003

Dated this the 3rd day of December, 2007

J U D G M E N T

Raman,J:

This is an appeal against an order passed by the Third Additional Sub Judge, Ernakulam in I.O.P.No.46 of 1998. The appellant along with his mother preferred an Indigent O.P. (I.O.P.No.46 of 1998) before the court below claiming that they are indigent persons and seeking permission to sue as indigent persons. The first petitioner died subsequently. Therefore, the only contesting party is the appellant herein who is the second petitioner before the court below. The court below did not reject the application at the threshold, but posted the same for evidence. The evidence was let in by both sides. The court below did not enter a finding as to whether the appellant is an indigent person or not, but chose to reject the application on the ground that the application is not filed and presented in the manner provided under Rule 2. Hence this appeal.

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2. We have heard the parties. As per Rule 2 of Order XXXIII, every application for permission to sue as an indigent person shall contain the particulars required in regard to plaints in suits; a schedule of any movable to immovable property belonging to the applicant, with the estimated value thereof and shall be annexed thereto and shall be signed and verified in the manner prescribed for the signing and verification of pleadings. As per Rule 3 of Order XXXIII, the application has to be presented to the court by the applicant, in person, unless he is exempted from appearing in court. As per Rule 4 of Order XXXIII, where the application is in proper form and duly presented, the court may, if it thinks fit, examine the applicant or his agent, when the applicant is allowed to appear by the agent regarding the merits of the claim or the property of the applicant. Sub-rule 2 of Rule 4 is not relevant for our purpose. As per Rule 5, the Court shall reject an application for permission to sue as an indigent person on any of the grounds mentioned in Rule 5(a) to (g) thereof and as

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per Rule 5(a), such an application shall be rejected when it is not framed and presented in the manner prescribed by Rules 2 and 3. There is no doubt, therefore, that the court is entitled to reject an application if it is not framed and presented in the manner prescribed by rules 2 and 3. In this case, it is clear that the application for permission is not framed and presented in the manner prescribed by Rules 2 and 3. But, the stage on which the rejection was made in this case is after taking the entire evidence in the matter. The question therefore arises as to whether such rejection after the entire evidence is taken is proper having due regard to the facts and circumstances of the case and also based on the relevant provisions contained in Order XXXIII.

3. As we have already indicated, when an application is presented, and if it is in proper form and duly presented, the court may if it thinks fit, examine the application, regarding the merits of the claim. Therefore, the rejection of an application on the ground that it is not in proper form and duly presented is

objectionable. Once the court has not dismissed the said application, normally the question of having evidence on the merits of the claim arises only then. In this case, the court below did not reject the application at the threshold rather than posted the case for evidence. This procedure adopted by the court, we consider, is not proper. Wilfully, if it is considered whether the application was presented in proper form at the time of presentation and if it is found that the same is not presented in the manner required by law, it should have been dismissed at the threshold so that there arises no occasion for the parties to lead any evidence. We say so because once an evidence is taken, the Court is bound to pass an order on the merits of the case and to decide the question as to whether the applicant is an indigent or not. Once it is refused, there is a clear bar of presentation of subsequent application in terms of Rule 15 of Order XXXIII. But the main fact that there was an omission on the part of the court in not dismissing the application at the threshold by itself will not take away

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the jurisdiction of the court in dismissing the application on a later stage if, as a matter of fact, the application presented was not in the prescribed form in terms of Rules 2 and 3. But, since the court below has already taken evidence and the court below has opted to reject the application, the rejection of such application may not bar a fresh application being filed in which event the whole process of taking evidence will have to be repeated affecting the rights of the parties. Therefore, we find that in the factual situation and the totality of evidence that has been taken by the court below, if the court finds that before finally deciding the matter on merits, if there is any defect in the application, the court should have given time to cure the defect and thereafter proceeded to decide the case on merits based on the evidence adduced. The same view is taken in a decision reported in **Bommineni Laxmi Devamma** v. **Bommineni Konappa** (AIR 1990 A.P.115)

4. In the result, we set aside order passed by the court below remitting the matter for fresh

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consideration. The appellant herein is given three weeks time to cure the defect and to present the application in the prescribed form as in terms of Rules 2 and 3 whereupon the court below shall decide the case on merits based on the evidence already on record.

The appeal is disposed of as above.

**P.R.RAMAN,
Judge**

**V.K.MOHANAN,
Judge**

Mbs/

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V.K.MOHANAN, J.

O.P.NO. OF 2001

J U D G M E N T

DATED: -0-2007

F.A.O. NO. 104 of 2003

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